

**OPEN RECORDS AND MEETINGS OPINION
2001-O-05**

DATE ISSUED: June 7, 2001

ISSUED TO: D. Guy McDonald, Superintendent, Fort Yates Public School

CITIZEN'S REQUEST FOR OPINION

On May 11, 2001, this office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Stacey Bendish asking whether the Fort Yates Public School Board violated N.D.C.C. § 44-04-20 by holding a retreat that was not preceded by sufficient public notice.

FACTS PRESENTED

The Fort Yates Public School District Board (Board) held a retreat on April 27-28 at a hotel in Bismarck, North Dakota. Mr. Bendish delivered some paperwork to the school on April 27 and learned of the retreat. Mr. Bendish "checked all the usual places for the notice" of the meeting and found no notice. In its response to the request for this opinion, the school superintendent indicated the dates of the retreat were set during a Board meeting. However, he acknowledged that the school "probably did not post the retreat." In a telephone conversation with this office, the superintendent indicated that the Board also did not file a notice of the meeting with the county auditor. No one was asked to leave the meeting.

ISSUE

Whether the Board's retreat on April 27-28 was preceded by public notice in substantial compliance with N.D.C.C. § 44-04-20.

ANALYSIS

All "meetings" of the board of a public school district are required to be open to the public, N.D.C.C. § 44-04-19, and preceded by public notice in substantial compliance with N.D.C.C. § 44-04-20. See, e.g., 1997 N.D. Op. Att'y Gen. O-2. The definition of "meeting" is not limited to gatherings at which formal action is taken on an item of public business and includes "work sessions" and other informal gatherings. N.D.C.C. § 44-04-17.1(8).

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See also 1998 N.D. Op. Att'y Gen. O-11. The Board does not dispute that its retreat involved school business and was attended by a quorum of the Board. Accordingly, the retreat was a "meeting" for which notice was required under N.D.C.C. § 44-04-20.

Notice of all "meetings" as defined in N.D.C.C. § 44-04-17.1 must be:

1. Posted in the governing body's principal office, if any;
2. Posted at the meeting location (on the day of the meeting);
3. Filed with the appropriate central location (secretary of state for state-level entities, city auditor for city-level entities, and county auditor for county-level entities), unless all the notice information was previously included in the governing body's annual schedule; and
4. Provided to anyone who has requested notice of the meeting.

N.D.C.C. § 44-04-20(4), (5). For special or emergency meetings, the notice also must be:

5. Provided to the public entity's official newspaper, if any; and
6. Provided to any representatives of the news media who have requested it.

N.D.C.C. § 44-04-20(6). Notice of a meeting must be provided in substantial compliance with these requirements. N.D.C.C. § 44-04-20(9).

In this case, the Board neither filed a notice of its retreat nor posted a notice of the retreat at the school. Failing to post and file a notice of a meeting is not substantial compliance with N.D.C.C. § 44-04-20, even if the meeting date was announced during a previous meeting. 1998 N.D. Op. Att'y Gen. O-9. Therefore, it is my opinion that the Board violated N.D.C.C. § 44-04-20 by failing to provide sufficient notice of its retreat on April 27-28, 2001.

CONCLUSION

The Board's retreat on April 27-28 was not preceded by public notice in substantial compliance with N.D.C.C. § 44-04-20.

STEPS NEEDED TO REMEDY VIOLATION

Since the Board's retreat was not recorded or accompanied by written minutes, the failure to provide sufficient notice of the meeting cannot be completely remedied. Based on information provided by the school superintendent, the discussion during the retreat can be divided into three areas:

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1. The superintendent's job performance;
2. The school improvement plan; and
3. A list of nine numbered topics prepared by the superintendent.

The superintendent's letters to this office indicate that the superintendent's evaluation and the school improvement plan were discussed at length by the Board at a subsequent special meeting of the Board held on May 29, 2001. Notice of that special meeting was posted and filed with the county auditor. The only item that has not already been discussed at an open public meeting involves the nine topics listed on the "School Board Retreat" document prepared by the superintendent.

The Board must convene an open meeting, preceded by proper public notice, at which the Board recreates the discussion that occurred during its retreat regarding the nine topics prepared by the superintendent.

Failure to issue a notice as required in this opinion within seven days of the date this opinion is issued will result in mandatory costs, disbursements, and reasonable attorney fees if the person requesting the opinion prevails in a civil action under N.D.C.C. § 44-04-21.2. N.D.C.C. §44-04-21.1(2). It may also result in personal liability for the person or persons responsible for the noncompliance. Id.

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